

## Myanmar's New Condo Law

### What foreign investors need to know

February 2016

On 22 January 2016, the Myanmar Parliament (the Pyidaungsu Hluttaw) passed The Condominium Law (**Condo Law**). The Condo law broadly sets out the definition of a condominium and the rights and duties of the developer and owners.

In this article, we set out what foreign investors need to know about the Condo Law:

#### 1. Does the Condo Law apply to all residential developments?

No. The residential development must satisfy, *inter alia*, the following requirements:

- (i) is a building of at least six storeys;
- (ii) is constructed on land that is more than 20,000 square feet (or 1,858 square metres); and
- (iii) is constructed on land which has been registered as "collectively owned land" by the relevant Myanmar Authorities.

Some of these requirements will be difficult to satisfy. Most current and planned real estate projects in Myanmar are developed on a build-operate-lease (BOT) basis. This means that the owner of the land is usually a government entity. The government entity leases the land on a long-term basis to a developer, which can be a foreign-owned company that is benefitting from an investment permit under the Foreign Investment Law. There is no provision under the Condo Law that allows current developments under this structure to be registered as condominiums.

#### 2. Can a foreign individual or company purchase an apartment?

Foreign individuals (i.e. a person who is not a citizen) will be able to purchase an apartment. However, it is unclear

whether a foreign company (or any other non-natural person) will be entitled to purchase an apartment.

#### 3. Can 100% of the condominium be foreign owned?

Only 40% of the apartments in a condominium can be purchased by foreigners. It is unclear whether this restriction refers to 40 per cent of the total number of units, or the gross square footage of the development. It is likely that developers will want to structure investments which are the most favourable and allow the optimal percentage of foreign ownership under the Condo Law. It will also be difficult to track ownership to maintain the 40 per cent threshold, and there will need to be a way in which this is tracked to ensure that it is not unknowingly breached. It is also not clear whether a foreign investor can purchase an apartment on the re-sale market from a local investor or whether once an apartment is part of the foreign quota, it will always remain that way.

#### 4. What type of document will evidence ownership in an apartment?

Ownership will be evidenced by an apartment certificate. Any transfer of the apartment will also need to be registered with the Myanmar Authorities within 30 days from the date of transfer. Under the Condo Law, the purchaser will need to bear the cost of the stamp duty and cost of registration of the apartment transfer.

On the face of it, the Condo Law appears to share some of the features of strata title legislation that can be found in Singapore and Thailand. For instance, a person who purchases an apartment will be granted a share in the collective owned land which will be used to determine the contribution level to the maintenance and management fund.

## 5. How will the condominium be managed?

The Condo Law includes the concept of a condominium "association". The "association" will be responsible for the management and maintenance of the condominium. However, the Condo Law lacks clarity as to how the "association" will fulfil this responsibility. An investor in Singapore would expect this concept to be akin to the concept of a "Management Committee" in Singapore and for the "association" as a separate legal entity which can sue and be sued. There is also no provision to allow an "association" to delegate the day-to-day running of the management of the condominium to a third party managing agent. We expect these details to be clarified in further implementing regulations.

## 6. When will the Condo Law come into effect? Will there be any further guidance or legislation?

The President of Myanmar still has to approve the Condo Law in its current form. We understand the Ministry of Construction is expected to release further details of the Condo Law in the coming months. These details will include floor designation, number of apartments, parking lots, and other building measures.

Like many Myanmar laws, the devil is in the implementation detail. It remains to be seen how the Myanmar authorities will implement this new legislation, together with other existing legislation, especially if there are provisions which appear conflicting.

## Conclusion

While, the Condo Law is unlikely to result in a massive influx of real estate investors into Myanmar in the short term, it nevertheless opens up the possibility for foreigners working in Myanmar to purchase their own home and foreign investors to diversify their property portfolio.

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